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No. 340

In the Supreme Court of the United States

OCTOBER TERM, 1960

**INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,
HAVERHILL TYPOGRAPHICAL UNION No. 38, WOR-
CESTER TYPOGRAPHICAL UNION No. 165, PETITIONERS**

v.

NATIONAL LABOR RELATIONS BOARD

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FIRST CIRCUIT**

**MEMORANDUM FOR THE NATIONAL LABOR
RELATIONS BOARD**

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The petition presents, in a slightly different context, the same issues involved in *National Labor Relations Board v. News Syndicate Company, Inc.*, No. 339, this Term. The questions presented are whether a union violates Section 8(b) (2) and (3) of the National Labor Relations Act, as amended,¹ by insisting upon, and striking to secure: (1) a contract clause

¹ Section 8(b) (2) makes it an unfair labor practice for a union "to cause or attempt to cause an employer to discriminate against an employee in violation of" Section 8(a) (3). Section 8(b) (3) makes it an unfair labor practice for a union "to refuse to bargain collectively with an employer."

which incorporates union working rules "not in conflict with * * * federal or state law," but does not particularize what rules are excluded as illegal; and (2) a clause which vests exclusive control over hiring in a foreman required to be a union member.* The court below predicated its conclusion that petitioners' efforts to obtain those clauses violated the Act on the premise that the clauses themselves were illegal in that they encouraged union membership in violation of Section 8(a)(3) of the Act.* The Second Circuit in *News Syndicate* has reached precisely the opposite conclusion with respect to the same clauses, holding that they do not violate Section 8(a)(3). And see *Honolulu Star-Bulletin v. National Labor Relations Board*, 274 F. 2d 567 (C.A.D.C.).

In view of the conflict of decisions and the importance of the question, the Board has filed a petition for certiorari in the *News Syndicate* case, No. 339, this Term. Accordingly, the Government does not oppose the grant of the present petition.

* The Board and the court below also found that the foreman clause was violative of Section 8(b)(1)(B) of the Act, which makes it an unfair labor practice for a union to restrain or coerce "an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances."

* Section 8(a)(3) makes it an unfair labor practice for an employer "by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization."

Respectfully submitted.

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SEPTEMBER 1960.